THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12019 OF 2005

Dated: 3rd October, 2005.

Between

M/s. Sri Sai Sanketh Corporation, a proprietary

Concern, at 4-1-733, Mojamjahi Market, Hyderabad,

Rep. by its Proprietor Ch. Veeresham S/o. Shankaraiah,

Aged 55 years, Occ. Business, R/o. Hyderabad.

… Petitioner

And

1. Govt. of A.P., rep. by its Secretary, Women Development and Child Welfare Department, Secretariat, Hyderabad and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12019 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the alleged action of the 2nd respondent – Project Director, District Women and Child Development Agency, Karimnagar in not issuing Tender Schedules to the petitioner in respect of Tender Notice dated 24-5-2005 on the ground that the petitioner is not a local of Karimnagar as arbitrary and illegal.

The facts, in brief, are as under :

The 2nd respondent issued the Tender Notice dated 24-5-2005 inviting tenders for supply of condiments and other provisions to 1,721 Anganwadi Centres under the jurisdiction of 11 I.C.D.S. Projects in Karimnagar District for the year 2005-06. As per the said Tender Notice, the tender schedules can be obtained after 5.00 p.m. on 2-6-2005 on payment of Rs.2,000/- by way of demand draft and the same shall be submitted before 3.00 p.m. on 4-6-2005. In pursuance of the said Tender notice, the petitioner intended to participate and accordingly approached the 2nd respondent requesting to issue tender schedule. However, the same was not issued to the petitioner on the ground that the petitioner is not a local of Karimnagar. Aggrieved by the said action of the 2nd respondent, this writ petition is filed.

The contention of the petitioner is that as a matter of fact he is a native of

Karimnagar, however he has been carrying on business at Hyderabad. It is also contended that in any event the action of the respondent in refusing to issue the tender schedule to the petitioner on the ground that he is a non-local is impermissible apart from being arbitrary and illegal.

The 2nd respondent filed a counter-affidavit stating that the Government vide G.O.Ms.No.39, Women Development and Child Welfare Department and Disabled Welfare (ICDS) Department, dated 16-8-2002 constituted a Supplementary Nutrition Programme Committee and the said Committee was entrusted with the responsibility for selection of menu and finalisation of tenders to purchase food commodities required by the Anganwadi Centres. As per the Orders of the Joint Collector/Chairman of the said Committee, the Tender Notification dated 24-5-2005 was issued inviting sealed tenders from the local reputed firms, local authorised distributors and local dealers of Karimnagar district for supply of condiments and other provisions to 1,721 Anganwadi Centres. It is stated that the writ petitioner has never approached the 2nd respondent for issuance of tender schedule and therefore the allegations made are absolutely incorrect. That apart, the petitioner is a non-local and as per the Tender Conditions, the petitioner is not eligible to participate. It is further explained that sealed tenders were called for from the local reputed Firms/Co-operative Super Bazars/Local dealers of Karimnagar District but not only from Karimnagar local traders as stated by the petitioner in the writ petition. The main intention in calling sealed tenders from traders of Karimnagar district is that they will be available at local area of Karimnagar district and make supplies to the Anganwadi Centres bi-monthly as and when indented for supply. They may also sort out the problems, if any arise, in the supplies immediately and hence the local dealer / Co-operative Super Bazar are preferred. It is further stated that the 1,721 Anganwadi Centres are spread over in the interior areas of Karimnagar District. These Anganwadi Centres require meagre quantities of food materials like Jeera, Mustard, Turmeric Powder, Jaggery, Broken Wheat, Dry Chillies and Greengram Dall etc. The major item Rice is being supplied by the Andhra Pradesh Civil Supplies Corporation at controlled rate. Hence, the purchasers are preferred from the local traders only. Since they will be within the reach and available at any time and they have to supply the condiments to the Child Development Project Officers at Project Headquarters.

It is further stated that in response to the Tender Notice dated 24-5-2005, fifteen tenders have been received which were opened on 6-6-2005 in the Chamber of the Joint Collector in the presence of the Tenderers and Supplementary Nutrition Programme Committee Members. Out of the tenders received, ten tenders were rejected for not complying with the tender conditions. Among the five eligible tenderers, three tenderers were found to be the lowest bidders and the rates quoted by them together with the samples were approved by the Committee on 6-6-2005 itself. Accordingly, the Joint Collector/Chairman of the Supplementary Nutrition Programme Committee has issued orders to the said three approved tenderers allotting the work orders for supply of nine items specified in the Schedule-II of the Tender Schedule for a period of one year from 1-6-2005 to 31-5-2006 vide proceedings dated 8-6-2005. The said tenderers have also submitted 10% Performance Security Deposits on the same day. The petitioner who never approached the 2nd respondent for purchasing the tender schedule has no *locus standi* to file the writ petition and therefore the same is liable to be dismissed in limini.

A separate counter-affidavit has been filed on behalf of the respondents 4 to 6, who are the successful bidders and who got themselves subsequently impleaded to the writ petition. In their counter-affidavit, it is stated that in pursuance of the proceedings dated 8-6-2005 they have already entered into agreements with the 2nd respondent and they have made the necessary deposits on 10-6-2005.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner while reiterating the contention that the action of the 2nd respondent in inviting tenders only from the local traders is arbitrary and illegal. He further submitted that such condition was not imposed in the Tender Notices dated 22-3-2005 and 8-6-2005 issued inviting tenders for supply of similar items namely condiments and other provisions for supply to Anganwadi Centres.

Hence, according to the learned Counsel, the action of the 2nd respondent being discriminatory is also hit by Article 14 of the Constitution of India.

At the outset, it is to be noted that the Tender Notice dated 8-6-2005 produced before this Court by the learned Counsel for the petitioner was issued by the A.P. State Civil Supplies Corporation Limited, but not by the Women Development & Child Welfare Department. Hence, the same cannot be placed on par with the Tender Notice in question and on that ground it cannot be held that the action of the 2nd respondent in inviting tenders only from the local traders is discriminatory. Though the Tender Notice dated 22-3-2005 appears to have been issued by the Women Development & Child Welfare Department itself in respect of the provisions required by the Anganwadi Centres in Warangal District, I do not find any justifiable reason to issue Writ of Mandamus as prayed for compelling the 2nd respondent to take similar steps as taken by the Joint Collector, Mahaboobnagar.

The law is well settled that the Tender Inviting Authority is entitled to fix its own terms of tender and it is not open to judicial scrutiny. Particularly, in the case on hand, the 2nd respondent in his counter has explained in detail that the quantities of food materials required by the Anganwadi Centres are meagre and that apart 1,721 Anganwadi Centres are spread over in interior areas of Karimnagar District. It was stated that the approved traders have to supply the required quantities of condiments in 1Kg and ½Kg packets every month or bi-monthly and therefore local traders were preferred. Accordingly, the impugned tender notification was issued inviting tenders only from the local traders as decided by the Supplementary Nutrition Committee. In the light of the said explanation offered by the 2nd respondent who issued the tender notice, I do not find any merit in the contentions of the petitioner.

Admittedly, the said decision was taken by the Supplementary Nutrition Committee which was constituted only for the purpose of procuring the required condiments for supply to the Anganwadi Centres. The said committee taking into consideration the nature of the items to be supplied as well as the quantities and particularly keeping in view the fact that the Anganwadi Centres which are 1,721 in number are spread

over the entire district which are situated in interior areas, for the purpose of timely supply of the provisions apart from ensuring quality, thought it fit that inviting tenders only from the local traders would be advantageous. Hence, the impugned action in confining the tenders only to the local traders cannot be said to be making a classification without having any nexus with the object sought to be achieved. Hence, there is no merit in the contention that the condition in question is discriminatory much less arbitrary or illegal. That apart, there is absolutely no allegation of mala fides against any one of the respondents. The writ petitioner is only an unsuccessful bidder who did not fulfill the qualifying criteria as mentioned in the tender notice. Admittedly, the tenders have already been finalized and the same were awarded in favour of the respondents 4 to 6 herein. Hence, it is not open to the petitioner to question the tender conditions at this stage and on that ground also the writ petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. No costs. Needless to mention that the interim order dated 10-6-2005 shall stand vacated.

_____

3rd October, 2005.

gbs